STATE OF MICHIGAN

COURT OF APPEALS

MANUEL MARTINEZ-ALVARADO,

Plaintiff-Appellant,

v

J.D. POLLARD, INC.,

Defendant-Appellee,

and

PJETER STANAJ, d/b/a STANAJ NORTHVILLE, LLC,

Defendant.

UNPUBLISHED
April 19, 2011

No. 296040
Wayne Circuit Court
LC No. 08-018043-NO

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition and finding that defendant was plaintiff's employer, precluding plaintiff's negligence claim under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq*. For the reasons stated below, we affirm.

Defendant[1] had contracted with property owner Pjeter Stanaj to work on a building project. Among other things, defendant was to complete a metal roof on one building. Defendant subcontracted with Rolondo Martinez Construction ("RMC") to do the roof work. When RMC failed to prove it carried worker's compensation insurance for its employees, defendant stopped paying it. Stanaj took over payments to RMC, which continued to pay its employees; they continued to work on the roof. Defendant remained in charge of the roof project. Apparently, Stanaj also did not have worker's compensation insurance. About two weeks after defendant signed on to the project and after defendant's relationship with RMC had ended, plaintiff fell from the roof and was injured.

[1] "Defendant" refers to J.D. Pollard, Inc.

Plaintiff filed a worker's compensation claim that culminated in a redemption order. Under the terms of the agreement, plaintiff accepted $50,000 in redemption of "the employer's entire liability for workers' disability compensation benefits" for injuries sustained on October 1, 2007, "and any and all other dates of injury . . . while employed by J.D. Pollard, Inc." J.D. Pollard, Inc. is identified on the order in the box marked, "Employer."

On December 9, 2008, plaintiff filed the present suit alleging negligence by defendant. Defendant responded by asserting, among other defenses, that the claim was barred by the exclusive remedy provision of the WDCA, MCL 418.131. Defendant moved for summary disposition under MCR 2.116(C)(7) and (10), arguing that it was plaintiff's "statutory employer" under MCL 418.171, thus barring his claim, and that there was no evidence it had acted negligently. The trial court agreed with the first theory, and did not reach the second. The court found that defendant was the statutory employer because it paid the required worker's compensation benefits and therefore the claim was barred.

On appeal, plaintiff argues that the trial court erred in finding that defendant was the statutory employer solely because it paid the redemption award. Defendant terminated its contractual relationship with RMC before plaintiff was injured; thus, it was no longer the principal and is not immune from tort suit.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Michigan Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, whether an entity constitutes a "principal" within the meaning of MCL 418.171 is a question of law. *Bennett v Mackinac Bridge Auth*, ___ Mich App ___; ___ NW2d ___ (Docket No. 287628, issued August 31, 2010), slip op at 5.

The "exclusive remedy" provision of the WDCA states, "The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease," unless an intentional tort is alleged.[2] MCL 418.131. However, tort suits are permitted against third parties, unless otherwise precluded by statute. MCL 418.171 provides one prohibition against third-party suits where the employer is not insured and is contracting work under a general contractor or "principal." Specifically, the statute provides in relevant part:

> (1) If any employer subject to the provisions of this act, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, who is not subject to this act or who has not complied with the provisions of section 611, and who does not become subject to this act or comply with the provisions of section 611 prior to the date of the injury or death for which claim is made for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any person employed in the execution of the work any compensation under this act which he or she would have been liable to pay if that person had been

[2] No intentional tort is alleged in this case.

> immediately employed by the principal. If compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the person under the employer by whom he or she is immediately employed. A contractor shall be deemed to include subcontractors in all cases where the principal gives permission that the work or any part thereof be performed under subcontract.
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> (2) If the principal is liable to pay compensation under this section, he or she shall be entitled to be indemnified by the contractor or subcontractor. The employee shall not be entitled to recover at common law against the contractor for any damages arising from such injury if he or she takes compensation from such principal. The principal, in case he or she pays compensation to the employee of such contractor, may recover the amount so paid in an action against such contractor.

Thus, if defendant is a "principal" as defined in MCL 418.171, plaintiff's tort suit against it is precluded. The trial court in this case found defendant was a "principal" because it had paid plaintiff's worker's compensation redemption award. This was error.

Plaintiff is correct that mere payment of the redemption is insufficient in itself to relieve defendant of tort liability: "Neither the payment of compensation or the accepting of the same by the employee or his dependents shall be considered as a determination of the rights of the parties under this act." MCL 418.831. However, the trial court reached the right result, albeit for the wrong reason. We find at least two reasons exist for affirming the court's decision.

First, defendant's argument is valid that it is, in fact, the statutory employer despite not paying RMC directly. As defendant points out, the statute does not require an ongoing contractual relationship between the principal and the contractor. Under MCL 418.171, when the principal contracts with a non-compliant contractor for the contractor to execute any part of the work undertaken by the principal, as happened here when defendant subcontracted with RMC for the roof project for which defendant was responsible, the principal is liable to pay any person employed in that work any compensation owed under the act. Altering the payment terms of the contract does not change the fact that plaintiff was on the job because he was employed by the contractor, RMC, and RMC was the contractor because it was to execute the roofing part of defendant's duties.

In *Dagenhardt v Special Machine & Engineering, Inc*, 418 Mich 520; 345 NW2d 164 (1984), our Supreme Court explained that under the "statutory employer" provision:

> the principal incurs liability for an injured worker's disability compensation benefits merely because that worker was employed by an uninsured employer and was injured while performing work which the principal contracted for the employer to perform. Once liability has been imposed and the injured worker seeks or receives disability compensation benefits from the principal, "then, in the application of this act, reference to the principal shall be substituted for reference

> to the employer." [418 Mich at 528, quoting *Drewes v Grand Valley State Colleges*, 106 Mich App 776, 784; 308 NW2d 642 (1981).]

Moreover, the Court held that "whether plaintiff made a claim, whether defendant voluntarily paid benefits, or whether the compensation proceedings were instituted on defendant's petition is unimportant to our analysis and holding." *Dagenhardt*, 418 Mich at 530 n 4. The Court concluded that the worker's widow's wrongful death suit was precluded by the "statutory employer" claim. It should be noted that in *Dagenhardt*, as here, the worker's employer represented that it had insurance but it did not, but in *Dagenhardt* the principal and contractor had not suffered a dispute over their contract, as had happened here.

Under distinguishable facts, this Court held that the property owner and the general contractor were not statutory employers in *Burger v Midland Cogeneration Venture*, 202 Mich App 310, 313; 507 NW2d 827 (1993). In *Burger*, the plaintiff received worker's compensation benefits under a "wrap-up" worker's compensation insurance policy purchased by the property owner, which was to cover all contractors, subcontractors, and their respective employees at the job site. This Court found that because the plaintiff's employer was a named insured under the wrap-up policy, it had complied with the act: "[N]either defendant can be a statutory employer under § 171 because neither defendant contracted with someone who was not subject to the act or who had not complied with § 611." *Burger*, 202 Mich App at 315. Despite the fact that the property owner's policy had paid the employee's benefits, both defendants were capable of being sued in tort. However, in the present case, neither the property owner nor defendant has a broad, all-inclusive policy like the one in *Burger*, and there is no dispute that RMC was never in compliance with the act's requirements. Thus, *Burger* does not preclude a finding that defendant was the principal in this case.

Second, although the settlement agreement underlying the redemption is not an adjudication of liability, the agreement in this case expressly provided that plaintiff was "employed" by defendant on the date of his injury. In *Allen v Garden Orchards, Inc*, 437 Mich 417; 471 NW2d 352 (1991), our Supreme Court held that the widow's wrongful death claim *could* proceed because the parties entered into a redemption agreement, rather than undergo full litigation. The Court noted that "a redemption agreement 'constitutes neither an admission nor an adjudication of employer liability.'" *Id*. at 429, quoting *White v Weinberger Builders, Inc*, 397 Mich 23, 27, 34; 242 NW2d 427 (1976). "The redemption agreement, by its terms, constituted a settlement 'of any and all liability the employer might have for weekly Workmen's Compensation benefits' and did not purport to include or cover all liability Garden Orchards might have arising out of the injury." *Allen*, 437 Mich at 433. Because there was no adjudication regarding whether the worker was an employee or an independent contractor, and because the widow was not an employee or a party to the redemption agreement, the widow's suit was not precluded by the exclusive remedy provision of the act. *Id*. at 432-433. The Court stated, "This case would be [subject to dismissal] if Garden Orchards' counsel had conceded that [the decedent] was an employee and had consented to the payment of full workers' compensation benefits. Then, of course, [the widow] would be precluded from maintaining this action." *Id*.

The present case differs from *Allen* in two significant ways. This agreement *expressly* included an agreement that defendant was plaintiff's employer on the day of the injury. "[A] redemption is in fact a settlement, and therefore the effect to be given a redemption agreement

depends on the terms of the agreement itself." *Allen*, 437 Mich at 434 (Boyle, J, *concurring*), citing *Beardslee v Michigan Claim Services, Inc*, 103 Mich App 480, 485; 302 NW2d 896 (1981); *Nunley v Practical Home Builders, Inc*, 173 Mich App 675, 680-681; 434 NW2d 205 (1988). See, also, *Nat'l Union Fire Ins Co v Richman*, 205 Mich App 162, 166; 517 NW2d 278 (1994) ("[T]he redemption agreement entered into by the parties is a contract to settle the dispute between the parties without an adjudication or a determination of the rights of the parties under the WDCA"). Unlike the agreement in *Allen*, the parties here added express language to the standard form identifying defendant as plaintiff's employer. Second, unlike the widow in *Allen*, plaintiff was a party to the agreement here. The agreement's terms in this case state that defendant is the employer and plaintiff agreed to that. Given that concession, his tort suit against defendant is precluded by the exclusive remedy provision.

In sum, even though defendant was not paying RMC directly, the contract to perform the roofing work was between defendant and RMC and plaintiff's work was in execution of that contract. Defendant was therefore a statutory employer of plaintiff, precluding tort suit. Plaintiff also expressly agreed to this under the terms of the redemption agreement, discharging any further liability of defendant arising out of the injury.

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens